

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

EMILIANO P.,

Plaintiff,

-v-

6:23-CV-708

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

OF COUNSEL:

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DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

On June 13, 2023, plaintiff Emiliano P.¹ (“plaintiff”) filed this civil action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner”) denying his application for Supplemental Security Income (“SSI”) under the Social Security Act (the “Act”). Dkt. No. 1. Along with his complaint, plaintiff moved for leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3.

Because plaintiff did not consent to the direct exercise of Magistrate Judge jurisdiction, Dkt. No. 4, the case was referred to U.S. Magistrate Judge Christian F. Hummel for a Report & Recommendation (“R&R”), Dkt. No. 5.

Thereafter, Judge Hummel granted plaintiff’s IFP Application, Dkt. No. 7, the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 8, and the parties briefed the matter in accordance with General Order 18, which provides that a district court appeal from the Commissioner’s administrative denial of benefits is treated as if the parties have filed cross-motions for judgment on the pleadings, Dkt. Nos. 9, 15, 16.

On August 28, 2024, Judge Hummel advised by R&R that plaintiff’s motion should be granted, the Commissioner’s motion be denied, and the

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

Commissioner's final decision should be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. No. 17.

Neither party has lodged objections, and the time period in which to do so has expired. *See* Dkt. No. 17. Upon review for clear error, Judge Hummel's R&R is accepted and will be adopted in all respects. *See* FED. R. CIV. P. 72(b).

Therefore, it is

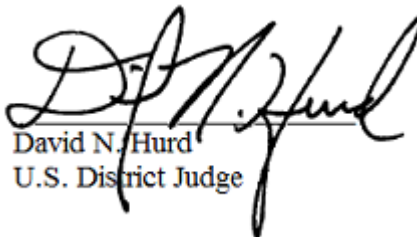
ORDERED that

1. The Report & Recommendation (Dkt. No. 17) is ACCEPTED;
2. Plaintiff's motion is GRANTED;
3. The Commissioner's motion is DENIED;
4. The Commissioner's final decision is VACATED; and
5. This matter is REMANDED for further administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).

The Clerk of the Court is directed to terminate the pending motion, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: September 12, 2024
Utica, New York.


David N. Hurd
U.S. District Judge